



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on September 17, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-11985

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Atlas Air, Inc. filed 9/10/04 for:

XX Waiver of the dormancy condition applicable to certain of its U.S.-Brazil all-cargo frequencies.

Atlas seeks a dormancy waiver for four of its ten U.S.-Brazil all-cargo frequencies through December 31, 2004. By Notice of Action Taken dated September 25, 2003, in this docket, the Department granted Atlas a dormancy waiver for four of its ten U.S.-Brazil all-cargo frequencies through September 30, 2004. Atlas now requests an extension through December 31, 2004, of its current waiver of the 90-day dormancy condition applicable to four of its ten U.S.-Brazil all-cargo frequencies.

In support of its waiver request here, Atlas states that it is continuing to experience adverse market conditions in the U.S.-Brazil all-cargo market. In addition, Atlas notes that it has applied in Docket OST-2004-17363 for Departmental approval for transfer of Atlas' Brazil route authorities, including the related dormancy waiver here, to Polar Air Cargo. Atlas states that it is seeking an extension of the dormancy waiver as the Department has not yet completed processing the transfer request. Atlas states that it would like to convey all ten of its frequencies to Polar, which is interested in using them after the unopposed route transfer request is acted upon by the Department. In this connection, Atlas states that a dormancy waiver extension would preserve the *status quo* for three months while the route transfer process is underway.

Arrow Air filed an answer. Atlas filed a letter.

Arrow states that it has not opposed the Atlas/Polar route transfer request in Docket OST-2004-17363 provided that the Atlas/Polar request does not adversely affect consideration of Arrow's application for new authority to serve Brazil. In this regard, Arrow urges the Department to act on its Brazil application in Docket OST-2003-16690.

In its letter, Atlas states that it has completed polling all of the carriers served and has received no objections. Atlas states that Arrow has used its answer as a vehicle to urge the Department to make a decision on Arrow's pending application in Docket OST-2003-16690. Atlas urges the Department to grant the requested dormancy waiver extension expeditiously in view of the approaching dormancy deadline.

Applicant rep: Russell E. Pommer, 202-354-3843 DOT analyst: Michael D. Bodman 202-366-9667

DISPOSITION

XX Granted. (See below).

The above action was effective when taken: **September 17, 2004, through December 31, 2004.**¹

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

¹Atlas' waiver from the dormancy condition is effective through December 31, 2004. As to any frequency with which Atlas does not begin service by that date, its allocation with respect to that frequency will expire automatically.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:
XX Holder's certificate of public convenience and necessity

Remarks: We find that grant of Atlas' request, in the particular circumstances presented, is in the public interest. However, we are putting Atlas on notice that there should be no expectation that an additional request will similarly be granted. As is our policy in considering dormancy waiver requests, we reserve the right to reexamine whether grant of this waiver continues to be in the public interest. Any future request to extend the dormancy waiver for the frequencies at issue here will have to be considered in light of the specific arguments offered and responses thereto, and in the context of the circumstances present at that time, including whether another carrier seeks to use the frequencies at issue.

As to the issues raised by Arrow, we note that our action here extending Atlas' dormancy waiver will not affect the Department's consideration of Arrow's application for new authority to serve Brazil in Docket OST-2003-11690.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; and (2) grant of the authority was consistent with the public interest. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the action taken in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp